

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

MAR 31 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

JOSEPH SWEENEY,)	2 CA-CV 2010-0143
)	DEPARTMENT A
Plaintiff/Appellant,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
BRUCE ASH and JANE DOE, a)	Appellate Procedure
married couple; HAROLD HOUGH, a)	
single person,)	
)	
Defendants/Appellees.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C20096933

Honorable Kenneth Lee, Judge

AFFIRMED

Joseph Sweeney

Tucson
In Propria Persona

Gabroy, Rollman & Bossé, P.C.

By Richard M. Rollman and Richard A. Brown

Tucson
Attorneys for Defendants/Appellees

H O W A R D, Chief Judge.

¶1 Joseph Sweeney appeals from the denial of his post-judgment “Motion to Amend Judgment,” attacking the trial court’s underlying judgment. For the reasons that follow, we affirm.

Factual and Procedural Background

¶2 The relevant facts are undisputed. Sweeney has been a candidate for public office on several occasions. At some point during his candidacies, Sweeney maintained a website for his campaign. He sued appellees Ash and Hough for various torts resulting from alleged misuse of his website, defamatory statements made about him, and negative press. Appellees filed a combined motion to dismiss and motion for summary judgment. The trial court granted these motions and then entered a final judgment on March 17, 2010. Sweeney filed a “Motion to Amend Judgment,” which the court denied in an unsigned minute entry on April 28, 2010. The court filed a signed order to this effect on October 26, 2010. This appeal followed.

Jurisdiction

¶3 We have an independent duty to determine whether we have jurisdiction over an appeal. *Sorensen v. Farmers Ins. Co. of Ariz.*, 191 Ariz. 464, 465, 957 P.2d 1007, 1008 (App. 1997). Our jurisdiction is prescribed by statute, and we have no authority to entertain an appeal over which we do not have jurisdiction. *See Hall Family Props., Ltd. v. Gosnell Dev. Corp.*, 185 Ariz. 382, 386, 916 P.2d 1098, 1102 (App. 1995). Sweeney cites A.R.S. § 12-2101(B) as the basis for our jurisdiction over his appeal.

¶4 Section 12-2101(B) vests jurisdiction in this court for an appeal “[f]rom a final judgment.” Sweeney filed a notice of appeal indicating that he was appealing the

April 28 ruling, which is the denial of his motion to amend, made pursuant to Rule 59(l), Ariz. R. Civ. P. The final judgment had been entered on March 17. The April 28 ruling is not a final judgment as contemplated by § 12-2101(B), *see* Ariz. R. Civ. P. 54(b), and a denial of a motion to amend is not otherwise an appealable order, *see* A.R.S. § 12-2101.

¶5 A denial of a motion for a new trial, however, is an appealable order. § 12-2101(F)(1). Given the substance of Sweeney’s motion below, in our discretion, we will treat it as a motion for a new trial. *See Farmers Ins. Co. of Ariz. v. Vagnozzi*, 132 Ariz. 219, 221, 644 P.2d 1305, 1307 (1982) (motion for new trial need not be so titled but must cite Rule 59 as authority and “describe grounds set forth under that rule”). And, because the trial court later signed an order denying the motion, the denial became procedurally appealable. Consequently, we have jurisdiction over this appeal.

Discussion

¶6 Sweeney’s notice of appeal indicates he appeals only from the trial court’s denial of his post-judgment motion. Therefore, we may only review that ruling. *See Lee v. Lee*, 133 Ariz. 118, 124, 649 P.2d 997, 1003 (App. 1982) (“The court of appeals acquires no jurisdiction to review matters not contained in the notice of appeal.”). But Sweeney does not explain on appeal how the court erred in denying this motion but rather attacks the underlying judgment instead. Therefore, Sweeney has waived his challenges to this ruling. *See* Ariz. R. Civ. App. P. 13(a)(6) (“An argument . . . shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on.”); *Polanco v. Indus. Comm’n*, 214 Ariz. 489, n.2, 154 P.3d 391, 393-94 n.2 (App. 2007) (appellant’s

failure to develop and support argument waives issue on appeal). Moreover, even were we to consider his notice of appeal sufficient to include the final judgment, Sweeney's arguments still would be waived for failure to develop and support them properly. *See* Ariz. R. Civ. App. P. 13(a)(6); *Polanco*, 214 Ariz. 489, n.2, 154 P.3d at 393-94 n.2.

Conclusion

¶7 In light of the foregoing, we affirm the trial court's denial of Sweeney's motion. Appellees have requested an award of their attorney fees under A.R.S. § 12-349(A)(1), which requires such an award if an action is brought without substantial justification, meaning it "constitutes harassment, is groundless and is not made in good faith." § 12-349(A)(1), (F). Although we have disposed of Sweeney's appeal summarily, we do not find it constituted harassment or was not brought in good faith. Therefore, we deny the request.

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Presiding Judge

/s/ Philip G. Espinosa

PHILIP G. ESPINOSA, Judge